

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Connors	Team: Squad #9	CCRB Case #: 201706634	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/12/2017 11:54 PM	Location of Incident: in front of 991 Myrtle Avenue	Precinct: 79	18 Mo. SOL 2/12/2019	EO SOL 2/12/2019	
Date/Time CV Reported Mon, 08/14/2017 3:45 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 08/14/2017 3:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Foley	18425	958596	079 PCT
2. POM Randy Sanchez	05340	956231	079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Lena Hanafi	09136	955972	079 PCT
2. POF Sonya Senra	14981	956253	079 PCT
3. LT Ryan Gillis	00000	944595	079 PCT
4. POM Michael Schiaffo	11234	956243	079 PCT
5. POM Kyle Barnett	24594	952443	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Patrick Foley	Abuse: Police Officer Patrick Foley stopped § 87(2)(b)	
B.POM Patrick Foley	Abuse: Police Officer Patrick Foley stopped § 87(2)(b)	
C.POM Patrick Foley	Abuse: Police Officer Patrick Foley stopped § 87(2)(b)	
D.POM Randy Sanchez	Abuse: Police Officer Randy Sanchez frisked § 87(2)(b)	

Case Summary

On August 12, 2017, at approximately 10:00 p.m., § 87(2)(b) was seated on one of three benches located within the confines of the New York City Housing Authority Sumner Houses in Brooklyn. § 87(2)(b) was hanging out with several male individuals in front of 991 Myrtle Avenue, which is a residential building within the Sumner Houses complex. Seated with § 87(2)(b) on the bench closest to Myrtle Avenue (approximately 50 feet away) was his friend, § 87(2)(b). On the bench furthest from Myrtle Avenue, were two individuals whom the investigation was unable to identify named, § 87(2)(b).” Also seated on this bench was § 87(2)(b). These benches are located approximately 40 feet in front of 991 Myrtle Avenue. While it was dark outside, there were several LED light fixtures that illuminated the area.

§ 87(2)(b) had arrived alone at the incident location from a barbeque at approximately 10:30 p.m. § 87(2)(b) arrived at approximately 11:00 p.m. Both § 87(2)(b) and § 87(2)(b) are employed by NYCHA, and were discussing a promotional exam they had both failed earlier that week. Neither § 87(2)(b) nor § 87(2)(b) interacted with the other individuals present during this time. At approximately 11:00 p.m., he observed § 87(2)(b) and an unknown male individual walk north-bound along a pedestrian path and begin playing a dice game, approximately 50 feet away from the benches. The two individuals gambled on the outcome of each game, exchanging money after each outcome. Approximately 20 minutes later, the two individuals stopped playing, and left a pair of dice on the pathway. § 87(2)(b) returned to the benches and the unknown male individual walked away towards Park Avenue.

At approximately 11:54 p.m., § 87(2)(b) observed an unmarked dark-colored sedan speed into the parking lot, located approximately 300 feet away. PO Lena Hanafi and PO Sonya Senra of the 79th Precinct exited from this vehicle. Three uniformed male officers, PO Patrick Foley, PO Michael Schiaffo, and Lt. Ryan Gillis of the 79th Precinct, exit from the building behind these benches (991 Myrtle Avenue). Two male plainclothes officers, PO Kyle Burnett and PO Randy Sanchez of the 79th Precinct, exit from an unmarked dark-colored sedan parked along Myrtle Avenue. The seven officers then converged on § 87(2)(b)'s location. PO Burnett and PO Sanchez stood in front of the bench occupied by § 87(2)(b) and § 87(2)(b). PO Foley, PO Schiaffo and Lt. Gillis stood in front of the unoccupied middle bench. PO Hanafi and PO Senra stood in front of § 87(2)(b) and § 87(2)(b) (**Allegations A, B, and C**).

Immediately after approaching the group, the officers removed their flashlights and began scanning the area beneath the benches, the walk path, and grassy areas nearby. Approximately two minutes passed before § 87(2)(b) asked the officers what was going on. PO Foley walked approximately 50 feet along the pedestrian path where he picked up a red die, and began throwing it up in the air and catching it in his right hand. PO Foley returned to where the other officers were standing in front of the benches, and informed the officers that § 87(2)(b) and § 87(2)(b) were under arrest. The two plainclothes officers then placed § 87(2)(b) in handcuffs and entered him into their vehicle. Prior to being handcuffed, § 87(2)(b) observed a plainclothes officer, identified via investigation as PO Randy Sanchez of the 79th Precinct, pat down § 87(2)(b) (**Allegation D**). PO Hanafi and PO Senra handcuffed § 87(2)(b) and placed him inside of their vehicle.

§ 87(2)(b) and § 87(2)(b) were then transported to the 79th Precinct stationhouse where their arrests were processed (**Board Review 01**).

§ 87(2)(b) and § 87(2)(b) were charged with promoting gambling in the 2nd degree and loitering in a public space while gambling. Ultimately, § 87(2)(b)'s charges were adjourned in contemplation of dismissal, and § 87(2)(b) was released from custody. § 87(2)(b) had no further interaction with these officers.

Body-Worn Camera footage was recovered from PO Hanafi and PO Senra for this incident; however, it does not capture the initial stop and frisks conducted by PO Foley and the other officers. It can be reviewed within CTS (IA47, IA48, and IA49). PO Foley was also equipped with a Body-Worn Camera during this incident; however, it was not turned on as PO Foley stated he did not remember to turn it on (**Encl. Board Review 06**).

This case exceeded 90 days due to attempts to locate and obtain statements from witnesses and difficulties in scheduling officers.

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation due to § 87(2)(b)'s and § 87(2)(b)'s arrest.
- A query of the Office of Court Administration revealed that § 87(2)(b) has no criminal conviction history within New York City (**Board Review 02**).
- On November 14, 2017, a request was sent to the New York City Comptroller's Office in regards to any Notice of Claim that may have been filed in regards to this complaint. It will be added to the case file upon receipt. (**Board Review 03**).

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (**Board Review 04**).
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- This is § 87(2)(b)'s first CCRB complaint (**Encl. Board Review 04**).
- PO Foley has been a member of service for two years and this is his first CCRB complaint (**Board Review 05**).
- PO Sanchez has been a member of service for three years and this is his fifth CCRB complaint. Based on his officer history, § 87(2)(g) (**Encl. Board Review 05**).

Potential Issues

- The investigation made numerous attempts to locate and contact the other victims and witnesses in this complaint in order to obtain sworn statements in regard to this incident. § 87(2)(b) provided contact information for § 87(2)(b) who was contacted about participating in the investigation. Ultimately, § 87(2)(b) did not provide a sworn statement as he became uncooperative with the investigation.
- An address was provided for § 87(2)(b) in the arrest report generated for this incident. Letters were mailed to that address and additional database searches were conducted for § 87(2)(b). As of November 16, 2017, § 87(2)(b) has not contacted the CCRB and the investigation was unable to locate and obtain a sworn statement from him.

- Without additional identifying information for the other victims in this complaint, database searches could not be conducted for those individuals.

Findings and Recommendations

Explanation of Subject Officer Identification

- PO Foley acknowledged being present for this incident. PO Foley testified that he was the officer who made the determination to stop § 87(2)(b) and § 87(2)(b) and ultimately place § 87(2)(b) and § 87(2)(b) under arrest for gambling. As such, **Allegation A, Allegation B, and Allegation C** have been pleaded against PO Foley (**Board Review 07**).
- § 87(2)(b) alleged that an officer had frisked § 87(2)(b) during this incident. § 87(2)(b) described the officer who conducted this frisk as a Hispanic male (medium complexion), who stood between 5'8" – 5'9" tall, in his late-20's or early-30's, with a medium build, who weighed approximately 200 pounds, with short black hair and black eyes, dressed in plainclothes (beige-colored t-shirt, light denim blue jeans, and sneakers). None of the officers identified via the investigation match the description provided by § 87(2)(b). PO Sanchez's NYPD Photograph lists him a Hispanic male (medium complexion), who stands § 87(2)(b), with an average build, who weighs 185 pounds, with short black hair and brown eyes. During his CCRB interview, PO Sanchez stated he had no independent recollection of being present during this incident. However, after reviewing Body-Worn Camera footage provided by PO Schiaffo of this incident, he acknowledged having been present. As such, **Allegation D** has been pleaded against PO Sanchez (**Encl. Board Review 01**).

Allegations not pleaded

Abuse of Authority: Frisk – Police Officer Foley frisked § 87(2)(b)

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It is undisputed that § 87(2)(b) and § 87(2)(b) were frisked during this incident. PO Foley acknowledged having done so but testified that the frisks were conducted incident to their arrest. As such, frisk allegations were not pleaded against PO Foley.

Abuse of Authority: Frisk – Officers frisked individuals.

§ 87(2)(b) alleged that officers had frisked the other individuals present during this incident, but could not describe their actions, nor which officers frisked which individuals. § 87(2)(b) only provided aliases for these individuals as he did not know their real names. Without statements from the alleged victims and without a more definitive statement from § 87(2)(b) the investigation had insufficient evidence to plead a frisk allegation against "Officers." Therefore, a frisk allegation was not pleaded.

Allegation A – Abuse of Authority: Stop - Police Officer Patrick Foley stopped § 87(2)(b)

Allegation B – Abuse of Authority: Stop - Police Officer Patrick Foley stopped § 87(2)(b)

Allegation C – Abuse of Authority: Stop - Police Officer Patrick Foley stopped

§ 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were stopped while seated along a row of three benches in front of 991 Myrtle Avenue (located within the confines of the New York City Housing Authority Sumner Houses) in Brooklyn.

At approximately 11:54 p.m., PO Foley, PO Schiaffo, Lt. Gillis, PO Hanafi, PO Senra, and two plainclothes officers converged on their location. The officers began scanning the area with flashlights, until PO Foley recovered a red die along the pedestrian pathway close by these benches. The officers informed § 87(2)(b) and § 87(2)(b) that they were under arrest for gambling and placed them in handcuffs. After being handcuffed, § 87(2)(b) and § 87(2)(b) were frisked, entered into separate unmarked vehicles, and transported to the 79th Precinct stationhouse for arrest processing.

PO Foley testified that while driving past the New York City Housing Authority Sumner Houses, he observed three male individuals (identified via the investigation as § 87(2)(b) and § 87(2)(b) engaged in a dice game in front of a set of benches located in front of 991 Myrtle Avenue. PO Foley made this observation from approximately 100 feet away from inside of his vehicle. PO Foley informed PO Schiaffo and Lt. Gillis of what he had observed. The officers then entered into 991 Myrtle Avenue to continue observations of the group from the rooftop. By the time the officers reached the rooftop, § 87(2)(b) had left the benches.

For approximately five minutes, PO Foley observed § 87(2)(b) and § 87(2)(b) throw dice on the ground and exchange currency based on each outcome. PO Foley informed PO Schiaffo and Lt. Gillis of these observations, and determined that § 87(2)(b) and § 87(2)(b) were under arrest for gambling. The officers then returned downstairs to effect their arrests (**Encl. Board Review 06**). PO Foley stated that at the time he had determined to stop the individuals, only § 87(2)(b) and § 87(2)(b) were observed to have been gambling. During this incident, PO Foley recovered three dice from the vicinity (**Encl. Board Review 07**).

People v. De Bour, 40 N.Y.2d 201 (1976) allows officers to stop individuals whom they reasonably suspect are engaging in, have engaged in, or are about to engage in acts of criminality (**Board Review 08**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation D – Abuse of Authority: Frisk – Police Officer Randy Sanchez frisked

§ 87(2)(b)

§ 87(2)(b) alleged that a plainclothes officer frisked § 87(2)(b) during this incident.

During his CCRB interview, Lt. Gillis stated he recognized PO Barnett via Body-Worn Camera footage provided by PO Hanafi. This footage captured PO Barnett standing at the front desk inside of the 79th Precinct stationhouse during § 87(2)(b) s and § 87(2)(b) s arrest processing. A review of the 79th Precinct Roll Call indicated that PO Barnett was working as part of the Anti-Crime team on Tour 1 and was partnered with PO Sanchez on August 13, 2017. PO Sanchez closely matched the physical description provided by § 87(2)(b) of the officer whom he alleged frisked § 87(2)(b) and as such, PO Sanchez interviewed in regard to this incident (**Board Review 09**).

During his CCRB interview, PO Sanchez testified he had no independent recollection of this incident (**Board Review 10**). However, after reviewing Body-Worn Camera footage provided by PO Schiaffo (**Board Review 11**), PO Sanchez acknowledged his presence within this footage but maintained he had no independent recollection of being on scene for this incident. When asked if he had frisked § 87(2)(b) or any other civilian present for this incident, PO Sanchez testified he had no recollection of frisking anyone.

§ 87(2)(b), § 87(2)(g)

_____.

Squad: **9**

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date